On behalf of the respondent it was argued, *inter alia*, that the legislature could not have intended to provide the empty right contended for by the appellant, that there is nothing in section 7 to support such conclusion, and that the right to be heard can only be effective if the person concerned is told by the Board what is alleged against him.

The legislation under review on this appeal confers a right to be heard, but is silent as to the procedure to be followed once a person has notified the Board of his desire to exercise that right. It seems to me that it would be wrong to assume that by its silence on the point the legislature intended to provide the doubtful remedy contended for by the appellant. In my opinion it is reasonable to assume that the intention was to provide an effective method whereby a person affected by a decision of the Board could represent his case and he cannot, in my view, do so effectively unless he is told what is alleged against him.

Sub-section (iii) of section 7 of the Enactment expressly provides that there shall be no appeal from a decision of the Board given under the powers conferred upon it by sub-section (i) of the section, but it goes on to say "but any such person shall, if he so desires, be heard by the Board either in person or by an advocate and solicitor of the Supreme Court".

I agree with the appellant's advocate that the Board is an executive body and that, when exercising its discretion under section 7(i), it is performing a purely executive function, but when a person affected has elected to be heard by the Board under sub-section (iii) of the section, I am of the opinion that the Board's functions in relation to the hearing become *quasi-judicial* ones.

For the reasons I have given I am of the opinion that an Order directing the Board to inform the the respondent of the reasons which led it to cancel his licence may properly be made. I, therefore, would dismiss this appeal and direct that a new Order be drawn up in conformity with this decision.

As the Board could not safely omit to appeal to this Court, and it has succeeded in one important particular, in my view, the respondent should only receive half the taxed costs on this appeal, which he would otherwise have received had he been wholly successful.

Abbott, J. : — I concur.

Wilson, J. : — I concur.

Order accordingly.

OOI PHEE CHENG v. KOK YOON SAN.

[Court of Appeal (Foster Sutton, C.J., Thomson and Wilson, JJ.) April 10, 1951]

[K.L. — Civil Appeal No. 48 of 1950]

Appeal — Court of Appeal — Jurisdiction of — Court of Appeal Rules 1948, rr. 7 and 11.

This appeal, notice of which was filed on 20th November, 1950, was against the decision of Taylor, J. dated 13th November, 1950. When it came on for hearing the preliminary point was taken by the respondent, who was the defendant in the original proceedings, that the decision of 13th November, 1950 was not capable of being appealed against. With this contention the Court agreed and ordered that the appeal be struck out and intimated at the same time that their Lordships would give their reasons in due course. The appeal was heard on 13th February, 1951.

APPEAL from the judgment of Taylor, J. reported in (1950) M.L.J. 187

W. G. W. Hastings for the appellant.

H. T. Ong for the respondent.

The judgment of the Court was delivered by :—

Thomson, J. : — This appeal, notice of which was filed on 20th November, 1950, was against a decision of Taylor, J., dated 13th November, 1950. When it came on for hearing the preliminary point was taken by the respondent, who was the defendant in the original proceedings, that that decision of 13th November, 1950, was not capable of being appealed against. We were of the opinion that that objection was well-founded and on 13th February, 1951, we allowed it and ordered that the appeal be struck out intimating at the same time that we would give our reasons for this course at a later stage.

In order to make clear the question in issue it will be desirable to set out the course of the litigation between the parties in some detail.

The plaintiff's claim was based on two loans amounting to $50,000 Japanese currency made by him towards the end of the Japanese occupation to one Lee Tuck Onn, now deceased, of whose will the defendant is the executor. In respect of these loans the plaintiff claimed $50,000 Malayan currency. The defence was in effect that there was no liability in respect of the alleged loans or that, if there were liability, the amount due was less than $50,000 either because some process of revaluation should be applied to the amount of $50,000 Japanese currency originally said to be lent or by virtue of the Usurious Loans Enactment (Cap. 63). On these pleadings there were three possible decisions. Judgment could be given for the plaintiff for the full amount claimed; or judgment could be given for the defendant; or yet again judgment could be given for

the plaintiff for some amount less than the full amount claimed.

At the conclusion of the trial on 10th May 1950, Taylor, J., decided to follow the third of the courses that were thus open to him. He ordered that judgment be given for the plaintiff for a sum to be assessed on inquiry by the Registrar; he ordered that the sums of Japanese currency amounting to $50,000 which were the subject matter of the case should be evaluated in Malayan currency at a rate to be determined by comparison with average prices of commodities prevailing at the times when the Japanese currency was lent; he ordered that the amount so arrived at be paid by the defendant to the plaintiff; and he reserved the question of costs pending the result of the Registrar's inquiry. A formal order to that effect was in due course drawn up and, as required by section 223 of the Civil Procedure Code, bore the date on which the decision had been pronounced, that is to say, 10th May, 1950.

On 9th June, 1950, the plaintiff filed a notice of appeal against such parts of the decision of 10th May, 1950, as decided that the amount awarded to him should be assessed on inquiry by the Registrar and as laid down the basis on which that inquiry should proceed. That appeal was withdrawn, the withdrawal being filed on 29th June, 1950, and on 3rd July, 1950, the plaintiff took out a summons for directions in regard to the inquiry which had been ordered. On 20th July, 1950, the necessary directions were given by the Senior Assistant Registrar who proceeded in due course to hold the inquiry and who ultimately on 9th September, 1950, gave and filed a certificate that a sum of $884 was payable by the defendant to the plaintiff.

No steps were taken by either of the parties to have the Registrar's certificate discharged or varied and on 11th October, 1950, the plaintiff took out a summons in chambers applying for an order confirming the Registrar's certificate and asking for costs of the suit including the costs of the inquiry. This summons came on for hearing before Taylor, J., on 13th November, 1950, and on that day having read the Registrar's certificate he made the order against which the plaintiff later sought to appeal which ordered that judgment be entered for the plaintiff for the sum of $884, and as regards costs made an order the exact nature of which is not quite clear but which was to the general effect that the plaintiff should have the costs of the suit other than the costs of the Registrar's inquiry and that the defendant should have the costs of that inquiry.

On 20th November, 1950, the plaintiff gave notice of appeal against the whole of the decision of 13th November, 1950, and there can be no doubt that when he said the whole of that decision he meant the whole of it in the widest possible sense for his memorandum of appeal which was filed on 12th December, 1950, and which it is unnecessary to set out at length here, concludes with the statement that the learned Judge should have given judgment for the plaintiff for $50,000.

If the appeal which was lodged on 20th November, 1950, were to be entertained three separate decisions of the High Court each of them embodied in a formal order bearing the date on which it was given would be called in question and would be in issue. First, there is the decision of Taylor, J., embodied in the order of 10th May, 1950, deciding that judgment should be entered for the plaintiff not for the full amount of his claim but for a sum to be ascertained by the Registrar on inquiry in accordance with the principles set out in the order. Then there is the decision of the Assistant Registrar embodied in his certificate of 9th September, 1950, as to the amount he found to be due after holding the inquiry he had been directed to hold. Finally, there is the decision of Taylor, J., of 13th November, 1950, ordering that judgment be entered for the plaintiff for the sum found due by the Registrar and dealing with the question of costs.

In my opinion, none of these decisions could be called in question by way of appeal on 20th November, 1950.

The jurisdiction of this Court to hear appeals from the High Court is founded on sections 36 and 37 of the Courts Ordinance. Section 36(1) provides that subject to the other provisions of the Ordinance and to any other written law the Court of Appeal shall have jurisdiction to hear and determine appeals from "any judgment or order" of the High Court in any civil matter. Section 36(2) provides that in any case not provided for by any written law the practice and procedure of the Court of Appeal in England shall be followed as nearly as may be. Section 37 restricts the provisions of section 36(1) by providing that no appeal shall be brought in certain specified cases, the only ones of which relevant here are the case where the judgment or order relates to costs only and leave to appeal has not been obtained and the case where the judgment or order is made by consent of parties.

The procedure relating to appeals is contained in the Court of Appeal Rules which form the Schedule to 1948 Rule No. 7 and Rule 11 of these Rules so far as it is relevant to the present case provides :—

"11. No appeal shall, except by special leave of the full Court of Appeal, be brought after the expiration of one month —

.....

(c) .....from the date on which the judgment or order appealed against was pronounced."

The wording of that Rule is perfectly clear and leads inevitably to the conclusion that except by special leave, which has been neither asked for nor obtained, no appeal could be brought against the order of 10th May, 1950, after the expiration of one month from the date on which it is pronounced. It is not necessary to consider the question of whether that order was a judgment or an order, or if it was an order whether it was a final order or an interlocutary one for the terms of the rule apply to any "judgment or order", and the time within which an appeal must be brought is in every case the same. Nor is it open to the plaintiff to call in aid the procedure of the Court of Appeal in England. The case is provided for by "written law" and there is an important and in this case crucial difference between the "written law" embodied in the local rule which has just been quoted and the English Rule (R.S.C. O. 58 r. 15) which differentiates between interlocutary orders and other orders in relation to the time within which an appeal must be brought and which provides that (except in the case of an appeal from an order in chambers) the period within which an appeal must be brought shall be calculated "from the time at which the judgment or order is signed, entered or otherwise perfected". Here, there is no question of the time when the order is signed, entered or perfected. The time runs from the date on which it is pronounced and in the present case that date was 10th May, 1950. It follows therefore that without special leave it cannot be appealed against after the expiration of one month from that date. It is true that an appeal was lodged within that month but it was withdrawn and can have no bearing on the question of the present appeal.

As regards the Registrar's certificate, the position is governed by the "Rules for regulating the practice and procedure in the Court of a Judge" contained in Government Notification No. 179 of 1919 which are preserved in force by section 110 of the Courts Ordinance. Rule 33 of these rules provides that the result of any proceedings before the Registrar shall be stated in the form of a certificate to the Judge which unless an order to discharge or vary the same is made shall be deemed to be approved and adopted by the Judge. Rule 34 provides that such certificate shall be filed in the Registry, "and shall thenceforth be binding on all parties to the proceedings, unless discharged or varied upon application by notice of motion, to be made before the expiration of fifteen clear days after the filing of the certificate".

The Registrar's certificate here was filed on 9th September, 1950, no steps were taken to have it discharged or varied and so upon the expiration of 15 days it became binding on the parties.

The material date here is 20th November, 1950, for that was the date on which the first step was taken in the present appeal. From what has been said, however, it is clear that on that date there was nothing against which the plaintiff could appeal. As regards the order of 10th May, 1950, which was to the effect that the plaintiff should recover not the $50,000 for which he sued but a sum to be ascertained on inquiry in accordance with certain specified principles, the time for appealing had long expired and it had not been extended. As regards the Registrar's certificate, no steps had been taken to have it discharged within 15 days of its being filed and it thereupon became binding on the parties. Moreover in so far as the order of 13th November confirmed that certificate it does not lie in the plaintiff's mouth to say that it was not made by consent for it was he who asked that it should be made and it is therefore not appealable by virtue of section 37(1)(b) of the Courts Ordinance. As regards the question of costs, that also was not in the absence of leave appealable by reason of paragraph (c) of the same sub-section.

Accordingly we were of the opinion that in the circumstances of the case the order of 13th November, 1950, could not be appealed against and ordered the appeal against it to be struck out.

Order accordingly.

REX v. CHOW FOOK LOY AND ANOR., (BAILORS).

[Crim. Rev. Juris. (Murray-Aynsley, C.J.) March 13, 1951]

[Singapore — Criminal Revision No. 3 of 1951]

Forfeiture — Order of — Whether Magistrate has power to order payment by instalments.

Once the Order of forfeiture is made there is a debt due to the Crown and a Magistrate or District Judge has no power to Order payment by instalments.

Semble. As there has been number of cases of persons who have been bailed failing to appear the Court should deal firmly with sureties.